IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)

Description of Case

Date of decision: 27.02.2007

Criminal Appeal No. 837 of 2001
(Old No. 2398 of 1987)

A.F.R. (Approved for Reporting)
Not approved for reporting

(Initials of Judge)

Date : 27.02.2007

Note : Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Judgment Reserved

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 837 of 2001
(Old No. 2398 of 1987)

1. Sri Darwan Singh (Died)
   S/o Dev Singh
   R/o Village Narangi Patwari
   Circle Parkhet
   Tehsil and District Chamoli
2. Sri Karan Singh
   S/o Darwan Singh
   R/o Village Narangi Circle Farkhet
   Tehsil and District Chamoli.
3. Smt. Mangala Devi
   W/o Late Sri Meharwan Singh
   R/o Village Narangi, Patwari Circle Farkhet
   Tehsil and District Chamoli .…….Appellants

Vs.

State ….Respondent.

Shri Pankaj Purohit, learned counsel for the appellants.
Shri Amit Bhatt, learned A.G.A. for the State.

Coram: Hon'ble Prafulla C. Pant, J.
Hon'ble Dharam Veer, J.

Per: Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 374 of Code of Criminal Procedure, 1973 (herein-after, for brevity, referred as Cr.P.C.), is directed against the judgment and order dated 21.09.1987, passed by learned Sessions Judge, Chamoli, in Sessions Trial No. 04 of 1987, whereby appellants Darwan Singh, Karan Singh and Smt. Mangala Devi, were fond guilty of offences

punishable under Sections 302 and 201 of Indian Penal Code, 1860 (herein after referred as I.P.C.) and each one of them is sentenced to imprisonment for life under Section 302 read with Section 34 I.P.C., and rigorous imprisonment for three years under Section 201 I.P.C.

2. We heard learned counsel for the parties and perused the record.

3. Prosecution story in brief is that Shiv Singh (deceased) was a bachelor who was living separately in village Narangi, Patwari Circle Farkhet, District Chamoli from his brothers. Accused Darwan Singh is his brother and accused Karan Singh is son of Darwan Singh. Accused Smt. Mangala Devi is widow of youngest brother (Meharwan Singh) of the deceased. In March 1986, Shiv Singh, moved an application for mutation over 1/3rd share of his ancestral property. In which he alleged that Smt. Mangala Devi is not legally wedded wife of Meharwan Singh. 14.11.1986 was the date fixed in the court of Tehsildar, Chamoli in said case. On 18.11.1986, accused Darwan Singh gave an information (Ext. A-2) to village Pradhan that his brother Shiv Singh did not reach on the date fixed i.e. on 14.11.1986 in the court and appears to be missing for last four days. On the basis of said report, Village Pradhan sent a letter (Ext. A-3) to Patwari of the area (In Uttaranchal hills Revenue Officials are given police powers in certain areas). On 19.11.1986, at about 10:00 A.M., the report

was registered by the patwari. On that very day, at about 2:00 P.M. one Ghura Singh and Sangram Singh (P.W.5) of Village Satoli gave information to the Patwari that a dead body of a man is lying in a rivulet in village Satoli. On receiving said information, accused Darwan Singh was called, as he has given report regarding missing of his brother, for identifying the dead body. Darwan Singh identified dead body of his brother Shiv Singh. Patwari took the dead body of Shiv Singh in his custody and prepared inquest report (Ext. A-12). Meanwhile, Rudri Dutt, Pradhan of Village Narangi, called a meeting of village Panchas in a traditional village Panchayat. Accused Smt. Mangala Devi was called by the Panchas. According to the prosecution, Mangala Devi told the Panchas that she along with Darwan Singh and Karan Singh committed murder of Shiv Singh on a raasta on 14.11.1986, at about 4:00 A.M. It is alleged by the prosecution that Mangala Devi disclosed that Darwan Singh gave assaults with danda on the person of Shiv Singh and Karan Singh concealed the body of Shiv Singh in the village. In the night of 18/19-11-1986, thereafter threw the dead body in a rivulet. It is alleged by the prosecution that Karan Singh and Balwant Singh (P.W. 2) were also present in the Panchayat and Balwant Singh admitted having helped the accused to throw the body in the rivulet. Darban Singh is said to have gone in the Panchayat but left the Panchayat under the pretext to pass urine. On 21.11.1986, a memo (Ext. A-4) is said to have been prepared by the Pradhan of the extra judicial

confession made by accused, as above. On its basis, it appears that a First Information Report (Ext. A-22) was registered by patwari and an entry is made in the general diary (extract of which is Ext. A-23). Patwari Sureshanand Dhondiyal (P.W.11) investigated the crime and arrested the accused. Meanwhile, P.W. 1 Dr. R.C. Nainwal (P.W.1) conducted autopsy on the dead body on 20.11.1986, at about 12:30 P.M. and opined that cause of death was shock and haemorrhage as a result of ante mortem injuries. He prepared post mortem examination report (Ext. A-1). The Investigating Officer after interrogation of the witnesses, submitted charge sheet (Ext. A-32) for trial of accused Darwan Singh, Karan Singh and Smt. Mangala Devi in respect of offences punishable under sections 302 and 201 I.P.C.

4. The Magistrate on receiving the charge sheet, after giving necessary copies to the accused person, as required under Section 207 Cr.P.C., committed the case to the Court of Sessions for trial. Learned Sessions Judge after hearing the prosecution and the defence, framed charge of offences punishable under Sections 302/34 and 201 I.P.C. All the three accused pleaded not guilty and claimed to be tried. On this prosecution got examined P.W. 1 Dr. R.C. Nainwal (who conducted autopsy on the dead body), P.W. 2 Balwant Singh (A accomplice), P.W. 3 Rudri Dutt (village Pradhan), P.W. 4 Ganga Singh (one of the Panchas before whom extra judicial confession is said to have been made), P.W. 5

Sangram Singh (who gave report- Ext. A-10 that dead body lying in the rivulet), P.W. 6 Jagdamba Prasad (a witness of identification of watch belonging to deceased), P.W. 7 Sundermani (one of the Panchas before whom extra judicial confession is said to have been made, P.W. 8 Vijay Singh, Supervisory Kanoongo (Revenue Official), P.W.9 Kunwar Singh (witness of the inquest report), P.W. 10 Shri N.C. Joshi, Sub-Divisional Magistrate, who conducted identification proceedings of article-watch belonging to the deceased and P.W. 11 Sureshanand Dhondiyal (Investigating Officer). Oral and documentary evidence were put to the accused persons under Section 313 of Cr.P.C. in reply to which they alleged the same to be false. However, no evidence in defence is adduced. The trail court after hearing the parties found all three accused guilty of offence punishable under the section 302/34 I.P.C. and 201 I.P.C. and sentenced each one of them after hearing on that point to the punishment, as mentioned earlier.

5. Before further discussions, it is pertinent to mention here the ante mortem injuries found on the person of the deceased at the time of post mortem examination, as mentioned in Ext. A-1:-

1. ***A lacerated wound 2cm X 1.5cm X bone deep over right parietal portion of scalp 6.5cm backward from hairline and 9.5 cm above***

from the top of the right ear. Clotted blood found.

2. ***A lacerated wound 9cm X 3cm X bone deep situated 1.5 cm backwards from injury No.1 with lacerated margins.***
3. ***A lacerated wound 1.5cm X 1.5cm X bone deep, over middle line of head, 1cm medially forwarded from injury No.2 with lacerated margins.***
4. ***Bluish green contusion 6cm X 5cm over and all around the right of the eye ball.***
5. ***Multiple abrasions (4 in number) over right side of cheek, size ranging from 1cm X .5cm to 2cm X 1c.***
6. ***Multiple abrasions (5 in number) over right side of cheek, size ranging from .5cm X .5cm to 1X1cm.***
7. ***Multiple abrasions (5 in number) over front of neck size ranging from 1 X. 5cm to 2 X 1.5cm.***
8. ***Abrasion over middle of nose 1.5cm X 1cm.***

The Medical Officer, who conducted autopsy, prepared the post mortem examination report (Ext. A-1) and

opined that the cause of death of deceased was shock and haemorrhage, as a result of ante mortem injuries

6. It is a case of circumstantial evidence, as there is no eyewitness of commission of murder. It is a settled principle of law that in such a case, to record conviction, there must be chain of circumstance established on record from the evidence adduced by the prosecution and the chain must be so complete that it suggests that none other than the accused has committed crime. In the present case what has been established is this that Shiv Singh, a bachelor, has died a homicidal death. The other adverse circumstance against the accused established is that deceased had initiated mutation proceedings for recording his name over the ancestral property to the extent of his 1/3rd share in which accused Darwan Singh and Mangala Devi were parties. Prosecution has also attempted to show that extra judicial confession was made by accused before village Panchayat. As far as the first two circumstances are concerned, the same are proved that Shiv Singh died a homicidal death and he had initiated mutation proceedings for recording his name over his 1/3rd share. However, it is nowhere established that due to that reason Darwan Singh or Mangala Devi or Karan Singh, son of Darwan Singh were so inimical with Shiv Singh that they would have gone to the extent of committing his murder. Whole prosecution story is based on the extra judicial confession, allegedly made by the accused. In a case of

extra judicial confession, there must be a clear-cut evidence that what were the actual words uttered by the accused and before whom. The prosecution witnesses namely P.W. 3 Rudri Dutt, P.W. 4 Ganga Singh, and P.W. 7 Sundermani, have stated that accused made a confessional statement before the village Panchayat but none of these witnesses have stated what actually Darwan Singh or Karan Singh have stated regarding their role in commission of crime. Merely standing in village Panchayat or leaving it without saying anything does not amount to confession. The above prosecution witnesses have stated that Darwan Singh left Village Panchayat on pretext to ease himself out and accused Karan Singh is said to have said nothing. Had the accused Darwan Singh, Karan Singh and Mangala Devi, committed murder of Shiv Singh, Darwan Singh himself would not have informed the village Pradhan on 18.11.1986 that his brother is missing for four days. Karan Singh had no enmity with his uncle Shiv Singh, who is said to have been an issueless man, as has come in the record. As far as extra judicial confession made by Smt. Mangala Devi is concerned, had she made extra judicial confession voluntarily, she would have signed memo (Ext. A-4), prepared by Pradhan regarding extra judicial confession. A memo (Ext. A-4) merely shows signatures of village Pradhan himself not even that of Panchas what to say of Mangala Devi or anyone else. Smt. Mangala Devi in her statement under section 313 Cr.P.C. has told the court that after dead body was found, some 28 persons of

village, came to her and gave beating to her. In such circumstances when villagers were giving beating to a widowed lady, the alleged extra judicial confession cannot be said to be voluntary disclosure of commission of crime by her. It has come in the evidence of P.W. 3 Rudri Dutt, P.W.4 Ganga Singh and P.W.7 Sundermani that they kept Mangala Devi and Karan Singh in their custody. That by itself shows that the alleged extra judicial confession is not voluntary one. It has also come on the record that when accused Mangala Devi and Karan Singh were taken to the Magistrate for making a statement, they denied having made any confession to anyone.

7. Otherwise also, if we believe the prosecution story that Shiv Singh's body was took out by accused after digging a ditch and thrown in the rivulet, it appears to be most improbable story. Learned counsel for the defence had taken the plea before the trail court that infact Shiv Singh had died due to a fit, as he suffered from Epilepsy.

8. In the above circumstances, we are of the view that extra judicial confession on which the prosecution story is based is neither voluntary nor stands proved to have been made by the accused/appellants. Therefore, in our opinion, the charges framed against the accused/appellant are not proved. We feel that the trial court appears to have committed error in appreciating the evidence on record.

9. For the reasons as discussed above, this appeal deserves to be allowed. Accordingly, the appeal is allowed. Accused/appellant Karan Singh and Mangala Devi are acquitted of the charges framed against them. They are on bail. They need not to surrender. Appeal field by Darwan Singh already stands abated due to his death.

(Dharam Veer, J.) **(Prafulla C. Pant, J)**

Dt:27.02.2007
Sweta